

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

) IN THE COURT OF COMMON PLEAS
) EIGHTH JUDICIAL CIRCUIT
) CIVIL ACTION NO.: 2020-CP-36-00382

JEFFERSON DAVIS, JR.

)
) ORDER AS TO MOTION TO DISMISS
) FIVE INDIVIDUAL DEFENDANTS

PLAINTIFF,

v.

RECEIVED

Oct 13 2023

SC Court of Appeals

CHAD CONNELLY; DAVE WILSON;
STEPHEN KIRKLAND; TOM PERSONS;
NEIL MELLEN; E3 SOFTWARE, LLC;
ENDURANCE INTERNATIONAL
GROUP HOLDINGS, INC; JOHN DOE
#1; JOHN DOE #2; & JOHN DOES 3-40;

DEFENDANTS.

A hearing was held on February 12, 2021, via the Judicial Branch’s Virtual Courtroom. The Plaintiff appeared pro se. Justin Novak appeared on behalf of Defendants Wilson, Persons, Connelly, and Mellen. Skyler Wilson appeared on behalf of Defendant Kirkland.

Each individual filed a Motion to Dismiss based upon the following SCRCF:

1. Wilson & Persons: 8(a) and 12(b)(6)
2. Connelly & Mellen: 8(a), 12(b)(6), and 12(b)(8)
3. Kirkland: 12(b)(3), 12(b)(6), 12(b)(8)

As a general statement, in ruling on these Motions to Dismiss, the Court is not concerned with the merits of these allegations in the Complaint but only as to the manner of pleading in the Complaint and the other issues raised by the Defendants.

RULE 12(b)(6)(a): Failure to State Facts Sufficient to Constitute a Cause of Action

All causes of action in the Complaint are alleged against each individual Defendant. Each cause of action will be addressed separately:

1. Defamation Per Se/Per Quod: Motion to Dismiss is DENIED. The Court finds that the Complaint alleges sufficient facts to constitute a cause of action. The elements are sufficiently pled.
2. Defamation by Innuendo: Motion to Dismiss is GRANTED. The Complaint fails to allege sufficient facts extrinsic to the language of the publication by innuendo so that there is meaning to the defamation.
3. Invasion of Privacy: Motion to Dismiss is DENIED. The Court finds that the Complaint alleges sufficient facts to constitute a cause of action. The elements are sufficiently pled.
4. Negligence: Motion to Dismiss is GRANTED. The Complaint fails to allege breach and proximate cause, which are two essential elements of this cause of action.
5. Intentional Infliction of Emotional Distress: Motion to Dismiss is DENIED. The Court finds that the Complaint alleges sufficient facts to constitute a cause of action. The elements are sufficiently pled. (Note: This cause of action alleges harm to the Plaintiff's wife and she is not a party to this action).
6. Conspiracy: Motion to Dismiss is DENIED. The Court finds that the Complaint alleges sufficient facts to constitute a cause of action. The elements are sufficiently pled.

RULE 12(b)(8): Another Action is Pending Between Same Parties and Claim

Defendants Connelly, Mellon, Kirkland

As to Defendants Connelly and Mellon, they raise res judicata, estoppel, waiver, and laches as grounds for dismissal all with respect to the "Weaver action" are discussed below. As to Defendant Kirkland, he raises the "Weaver action" as well as grounds for dismissal.

On May 3, 2018, the Plaintiff filed an action (Case No. 2018-CP-40-02425), known as the "Weaver action" against Ellen Weaver, Palmetto Institute, and multiple John Does. Judge

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DeAndrea Benjamin issued an Amended Order on October 30, 2018 in the above case ruling on a Rule 12(b)(6) Motion and further ordering the Plaintiff to file (and serve) within fifteen (15) days an Amended Complaint specifically naming the multiple John Does. He filed an Amended Complaint on November 19, 2018 naming the John Does, among others, Defendants Connelly, Mellon, and Kirkland. The Amended Complaint in the "Weaver action" set out nine (9) causes of action six (6) of which are the same causes of action in this current case. By Order of Judge Jack Early, dated February 19, 2019, the Amended Complaint as to the new co-Defendants was dismissed with prejudice for failure of the Plaintiff to comply with the time limitations as required in the Judge Benjamin's Order above. This Order of Judge Early is currently on appeal.

Several observations are important here:

1. In the current case, the factual allegations that give rise to the Plaintiff's causes of action are related to websites and emails, allegedly created by some or all of the Defendants, but they did not exist until months after Judge Early's Order above. The allegations, while sometimes similar in nature to those in the "Weaver action," are different from the allegations in the instant case;
2. In the "Weaver action," the Plaintiff never refers to Defendant Connelly by name other than in the opening by identification of all of the co-Defendants. As to Defendant Kirkland, he is mentioned but only as to allegations of what he had allegedly done and not anything against the Plaintiff. As to Defendant Mellon, he is mentioned several times as to defamatory conduct. The Plaintiff does use the term "Defendants" collectively in the Amended Complaint.



3. While the "Weaver action" and the instant case share some similarities, the basis for the allegations in support of the causes of action in the instant case are not the same as in the "Weaver action";
4. The doctrine of res judicata requires three elements and the primary element is the adjudication of the issues in the former suit or stated another way, a final judgment on the merits. There was no adjudication in the "Weaver action" naming Connelly, Mellon, and Kirkland. There was no final judgment on the merits in the "Weaver action". Judge Early took care of the case purely on procedural grounds.
5. The doctrine of collateral estoppel prevents a party from re-litigating an issue in a subsequent suit, which was litigated in a prior lawsuit. Again, there was no litigation of any issue in the "Weaver action" and the basis for the allegations in this instant case, i.e. websites and emails, were not in existence in the "Weaver action."
6. The doctrine of equitable estoppel is premised on the idea that one who delays unreasonably from asserting a right to the detriment of another is precluded from asserting that right. The Court is somewhat confused here. From all indications, once these websites and emails came into existence, the Plaintiff made his determination to file this instant lawsuit. The Court cannot find any unreasonable delay.
7. As to the doctrine of waiver and laches, again there must be a showing of unreasonable delay prejudicial to the Defendants. The Court can find none.

Rule 8(a): Pleading

Defendants Wilson, Persons, Connelly, Mellon

The Court notes that while the above Defendants state initially in their Motions and Memorandum that they are relying on Rule 8(a), there is no argument as to Rule 8(a). The Rule

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simply states that pleadings are to contain short and plain statements upon which the claims are based. While the Plaintiff fails miserably in this regard (i.e. The Complaint contains 47 pages), his lack of brevity will not be a basis for dismissal.

Rule 12(b)(3): Improper Venue

Defendant Kirkland

There was no argument in his Motion and Memorandum nor any oral argument at the hearing. The Court finds this ground for dismissal to have been abandoned by Defendant Kirkland.

Accordingly, the Motions to Dismiss the Defamation by Innuendo and Negligence causes of action are granted. All other remaining Motions to Dismiss are denied.

SO ORDERED.



DONALD B. HOCKER
CIRCUIT COURT JUDGE

Laurens, South Carolina

Date: 3-26-21

#5-



Newberry Common Pleas

Case Caption: Jefferson Davis Jr VS Chad Connelly , defendant, et al

Case Number: 2020CP3600382

Type: Order/Other

Circuit Court Judge

s/Donald B. Hocker, Judge Code 2167